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OFFICE OF PETITIONS

In re Application of
Tosaya, et al.
Application No. 10/688,152
Filed: 17 October, 2003
Attorney Docket No. TUUT:010USC1

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: ON PETITION
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This is a decision on the petition filed on 30 April, 2004, under 37 C.F.R. §1.53, to obtain a filing date of 17 October, 2003, for pages 75 and 76 of the instant application.

The petition is **GRANTED**, and decision of 7 June, 2004, is amended to correct the caption as set forth above as to filing date and docket number.

This application was deposited on 17 October, 2003. However, on 1 April, 2004, the Office mailed a "Notice of Omitted Items" in this nonprovisional application, stating that it appeared that pages 75 and 76 of the application were missing from the application on deposit.

In response, Petitioner's office submitted, *inter alia*, copies of: (a) what it contends are true copies of pages 75 and 76 of the application, (b) a copy of the entire application, incorporated herein by reference in the instant application (at the preliminary amendment deposited on 17 October, 2003), and (c) a copy of the date-stamped ("101703"--17 October, 2003) receipt card reflecting receipt by the Office of, *inter alia*:

* * *

Specification 121 Pages

* * *

Other: Req. for filing Continuation Appln.; Check (\$483); Copy of prior Appln.
SN 09/421,965 as-filed 10/20/00) w/Abstract, Claims, Spec., Informal Dwgs. &
Decls.); Preliminary Amendment . . .

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Analysis

A search and review of the official file reveals that on 17 October, 2003, the Preliminary Amendment was deposited as a part of the application it states: "This is a continuation of co-pending U.S. Patent Application Serial No. 09/421,965, filed October 20, 1999, * * * which are all hereby incorporated herein by reference in their entirety and serves a basis for priority for this disclosure."

Because Petitioner stated on in the application that the entire disclosure of the prior application was incorporated by reference, and Petitioner has included that disclosure, and a statement in the petition attesting thereto, the present petition will be construed as a petition to accept the specification and claims deposited on 30 April, 2004, as a complete copy of the entire disclosure filed with application No. 10/688,152 on 17 October, 2003. **Petitioner must notify the Office if this is not a correct interpretation.**

Because the 30 April, 2004, petition was not due to an error on the part of the Office, the petition fee submitted with it will not be refunded.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to 17 October, 2003, using pages 75 and 76 as deposited on 30 April, 2004, and pages 1 - 74 and 77 - 121 deposited on 17 October, 2003.

The application will then be forwarded to for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.



John J. Gillon, Jr.
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